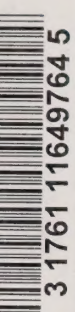


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Ontario Royal commission inquiry into labour disputes

Hearings

3 15 March 1967



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ROYAL COMMISSION
INQUIRY INTO LABOUR DISPUTES

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HEARINGS HELD AT
TORONTO

VOL. NO.

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Toronto, Ontario,
Friday, March 31st,
1967.

---At 2:00 P.M., the hearing commenced.

MR. POLLOCK: Well, I don't know whether anybody else will arrive, Mr. Renwick, but we are obliged for your attendance and if you have copies of our terms of reference and desire to make submissions within the terms of reference, we are ready to hear what you have to say. I understand you are appearing as a private individual and not representing any political party.

MR. RENWICK: If I may be categorized as a Member of the Legislative Assembly of Ontario, I am not here in that capacity at all nor, am I here as an expert in the field of Labour Law or otherwise and it isn't in my capacity as a member of the assembly.

The reason I wanted to appear was because I am concerned about what might be categorized as the political attitudes of the problems with which your Commission is faced, and with the concepts that are involved in the political attitudes. I would like, if I may, precipitate an exchange of views on some of these matters.

THE COMMISSIONER: Yes.

MR. RENWICK: I look at the Labour situation in the Province of Ontario as one which can, for the purpose of explanation and analysis, be categorized I think until 1943 and 1944, until the enactment of the Rights of Labour Act and Labour Relations Act as a relatively unstructured one.



1 The Common Law was operative in the
2 province at that time. I will come back to that, but
3 in 1943 and 1944 the statutes were enacted, and not just
4 the enactment of the statutes which were the result of
5 a process which accelerated during the later stages dur-
6 ing the War, which led to an acceptance in the community
7 of what is, in modern language, what would be called a
8 general consensus of how the community would deal with
9 this problem of Labour management relationships, and the
10 relationship of the government in this field of problems.
11 So the statutes themselves only mirrored that general
12 acceptance by the community.

13 I think this is illustrated by two or
14 three important aspects. For example, a formula known
15 by your name was part and parcel of the general settle-
16 ment, in the way we would deal with the problems and the
17 Rand formula was part of the settlement.

18 Another part is reflected in the Oshawa
19 Times and Tilco Plastics, in the case of injunctions,
20 and I am not speaking of the ex parte, but the interlocu-
21 tory injunction, which carried on. It was interesting to
22 note as the accepted practice, in the framework of set-
23 tlement, Council for the union and company consented to
24 the terms of the injunction. Again I am not speaking of
25 the ex parte, but this was part and parcel of it. The
26 Council for the union and company generally agreed as to
27 the proper working in which the Labour management re-
28 lations would be carried on. The injunction process was,
29 so far as it related to labour disputes, part and parcel
30 of the general settlement. It was a settlement by and



1 large, the community and the members of the trade unions,
2 the members of the corporation management and members of
3 the government, as part of the community, and the com-
4 munity accepted the relationship of the settlement of
5 disputes and by and large it worked for a generation.

6 Then in the last two or three years it
7 became apparent the structure was no longer really
8 functioning as well as it had, and therefore a certain
9 sense of unease in the community about the whole area of
10 relationships was felt, and we began to get at strike
11 positions on specific items in dispute. Some of a tem-
12 porary nature and some of a more permanent nature.

13 MR. POLLOCK: Have you examples of
14 those?

15 MR. RENWICK: Yes, I think the Toronto
16 Hydro Electric dispute which was settled in an evening's
17 debate in the Legislature in a rush atmosphere in 1965,
18 if my memory serves me correctly. That was an example
19 of ad hoc decision that compulsory arbitration be en-
20 forced, and as soon as the agreement was signed that
21 statute had no force and effect.

22 MR. POLLOCK: That was in 1962, wasn't
23 it?

24 MR. RENWICK: No, during my time in
25 the Legislature, the session of 1965, I believe. The
26 dispute between the local of the Canadian Union of Pub-
27 lic Employees and the Toronto Hydro Electric.

28 MR. POLLOCK: I was thinking of Ontario
29 Hydro.

30 MR. RENWICK: No, the Toronto Hydro



1 one. That was ad hoc because the statute expired as soon
2 as the agreement was reached, and signed. Another ex-
3 ample of an ad hoc solution, even though framed in per-
4 manent legislation, is the one related to hospital dis-
5 putes arbitration. There was a specific situation where
6 it appeared as though the public were prepared to accept,
7 and the forces of the community opinion was such both
8 the hospital boards and the unions interested in the
9 hospital employees were, whether whole-heartedly or not,
10 accepted the hospital disputes arbitration and there was
11 an intervening public interest which neither side could
12 disregard. Therefore, the government was able to pass
13 a more or less permanent statute dealing with that par-
14 ticular area.

15 I think it is only an ad hoc decision
16 because I am not satisfied that is necessarily the answer
17 in the field of hospital disputes, or other areas where
18 one could equate a predominant public interest involved.

19 MR. POLLOCK: So far as the legislation
20 is concerned, it does -- it has certainly more permanence
21 than Hydro legislation.

22 MR. RENWICK: It is a permanent statute.

23 MR. POLLOCK: And applicable to all the
24 hospitals is evident.

25 MR. RENWICK: Quite clear, and ad hoc
26 in the sense there was one segment of the relationship
27 with which the commission is involved, which we for hum-
28 anitarian or other reasons doubt, the government must
29 have felt that people would say there can't be strikes
30 in hospitals.



1 The strange thing is, of course, there
2 had never been to my knowledge, certainly insofar as the
3 ambit of the discussion in the statute was taken, there
4 has never been an action where a patient was inconven-
5 ienced in any way by a strike.

6 It was also quite clear as far as the
7 Trenton dispute was concerned, it was the total inability
8 of the Board of Governors of the hospital to bring them-
9 selves to feel they had to bargain collectively. It led
10 to the enactment of ~~the~~ statute and I leave that particu-
11 lar statute with the comment that it ~~has~~ appeared to me,
12 that it has been lost in the context in which that
13 statute was passed, that in fact it was the Board of
14 Governors of the hospital rather than the Trade Union
15 that was subject to criticism or fault, if one wants to
16 criticize or fault anyone for the inability to bargain
17 collectively.

18 Time will tell as to whether or not
19 that solution is applicable in other fields.

20 Another ad hoc decision -- I will come
21 back to Tilco.

22 MR. POLLOCK: Have there not been ar-
23 bitrations under the Hospital Labour Disputes Arbitration
24 Act? Subsequent to the original Trenton one?

25 MR. RENWICK: Yes, there have been
26 under the Act, and by and large as far as I am informed
27 the hospital employees are able to bargain collectively,
28 because of the statute; and I would not be surprised at
29 all if the unions which are now involved in it feel,
30 that because of the break through caused by the statute,



1 in participating/the recognition of bargaining collect-
2 ively by the Boards of Governors in hospitals in Ontario,
3 they have been able to advance the cause of the union
4 and the conditions of work of the people belonging to
5 the unions in a way not possible before. It has that
6 beneficial effect from the point of view of hospital em-
7 ployees. I would doubt at the moment, this is my own
8 impression, the principle unions involved would not wish
9 to see the repeal of the Hospital Disputes Arbitration
10 Act. In other words the emotional overtones of the
11 arbitration aspect of that act have disappeared, in
12 terms of the benefits which have accrued to the more
13 amicable relationship, which has led to an improvement
14 of working conditions.

15 I will refer to the Tilco case, the
16 injunction case again, in some more detail when I comment
17 on injunctions, but I would like to make this comment in
18 the area of ad hoc. The company generally was forced
19 into the extraordinary procedure by the stress of emotion
20 and this was the first time in the history of the prov-
21 ince that procedure had ever been used, and I therefore
22 categorized that as more or less ad hoc, an unusual
23 method of dealing with the specific situation.

24 Another category, of course, which falls
25 in the ad hoc decision area, is the National Railway
26 Strike and that type of strike where there appears to be
27 a predominant public interest. However, I think one can
28 say the freer aspect which held for a generation was be-
29 ginning to require shoring up in different places, as
30 it proved to be insufficient in some respects to the



1 conditions which are prevailing at the present time.

2 I would like to go back now to 1944 and
3 the period preceding that, because I think it is absolute-
4 ly essential, and I would hope your Commission, sir,
5 would unequivocally state what the law was at the time
6 immediately preceding the enactment of the Labour Re-
7 lations Act, and the Rights of Labour Act, and what the
8 effect of these statutes were.

9 There is a tendency, and my impression
10 is, there is a tendency for people to assume in some way
11 or other the Labour Relations Act and Rights of Labour
12 Act, confer rights on labour as such, that they were
13 specific additional contributions to the position of
14 the trade unions in the Province of Ontario. I would
15 like to deal with three aspects of my understanding of
16 what the position was in law, immediately prior to the
17 enactment of these statutes, and I have selected what
18 I believe to be out of the mass of material which is
19 available, the three items I would like to concentrate
20 on for the moment.

21 The three, I think, are the right to
22 belong to a union, the second one the right to strike
23 and the third one, the right to picket. That is my
24 understanding.

25 MR. POLLOCK: May I ask you, are these
26 the only three you are going to deal with, or are you
27 going to deal with bargaining in good faith and compulsion
28 on the employer and those unions as well?

29 MR. RENWICK: Later on I will deal
30 with them, but not for the purpose of establishing the



1 position immediately prior to 1944, which I think in fact
2 was the position for some substantial period of time
3 prior to that date. But the case I would refer to is
4 one undoubtedly well known to you, Polskoff versus
5 Winters Garment Company. It is reported in 1928,
6 62 O.L.R.

7 MR. POLLOCK: 1962?

8 MR. RENWICK: '62, O.L.R.

9 THE COMMISSIONER: Which page?

10 MR. RENWICK: Page 40. I think it is
11 a fascinating case, with a relatively lengthy judgment
12 by Mr. Justice Raney, as he was at that time, but I
13 don't intend to deal at any great length with the whole
14 case, but I think it does express very clearly what the
15 Common Law position was in Ontario.

16 THE COMMISSIONER: It was in relation
17 to wage disputes?

18 MR. RENWICK: The matter in dispute --
19 this was an action by an unincorporated trade union
20 against a corporate society of manufacturers, to enforce
21 an agreement in writing in the nature of a collective
22 bargain made in 1925, by way of settlement of disputes
23 between local manufacturers and local labour unions. I
24 can go back to what the court held in that case, but
25 the striking reference Mr. Justice Raney made at that
26 time was when he made this statement: "The so-called
27 Common Law doctrine -- and I emphasize the words 'so-called'
28 -- as applied to trade unions that combinations and con-
29 tracts in unreasonable restraint of trade are unlawful
30 as being against public policy, is not based upon the



1 well recognized principles of the Common Law. It is
2 based upon principles of political economy which were
3 at the time when the doctrine was so promulgated, as
4 they are still in keen controversy.

5 "The Parliament of England by various
6 statutes from the reign of Edward I to that of George IV,
7 prohibits agreements both of masters and workmen for
8 the purpose of lowering or raising wages, or of alter-
9 ing hours or otherwise affecting their mutual relations.
10 These agreements were declared by those English statutes
11 to be illegal and the parties entering into those were
12 liable to punishment.

13 "But by Chapter 129 of the English
14 Statutes of 1825 an entire change of the law was made."

15 And he explains: "By Section 2 of the
16 Act all the statutes prohibiting such agreements were
17 enumerated and absolutely repealed. By Section 3
18 prohibitions for the future were confined to endeavours
19 by force, threats, intimidation, molestation or ob-
20 struction to affect wages or hours, and those things
21 were made illegal and punishable, and by Sections 4 and
22 5 it is declared that neither masters nor workmen shall
23 be punishable for any agreements in respect of wages or
24 hours, unless they infringe on the prohibitions in
25 Section 3."

26 He goes on to deal with the period of
27 1832 to 1867 and the question of the franchise extension
28 of those years, and I believe I paraphrase principally
29 what he said. He said: "During the period from 1832
30 after the middle classes had by that Act been admitted



1 to power while the working classes were still excluded
2 from the scheme of enfranchisement, it was not until
3 1867 that the reform became effective and the franchise
4 was extended to include artisans. The doctrine of
5 restraint of trade was fastened upon the trade unions,
6 not by Parliament, but the judges."

7 It was not until 1853 the doctrine of
8 restraint of trade was definitely brought into the field
9 of Common Law -- the doctrine of public policy.

10 I take Mr. Justice Raney to say even
11 though he reluctantly then held he was bound to hold
12 the union in this case was an illegal society, that he
13 was very reluctant to do so.

14 THE COMMISSIONER: It really wasn't
15 necessary to go that far if it was an unincorporated
16 group, because they didn't constitute a person in the
17 eyes of the law.

18 MR. RENWICK: No, it was not, but he
19 was concerned about the status of the union as such as
20 a party to the agreement.

21 THE COMMISSIONER: Yes, but they brought
22 an action on the basis of the agreement, and I assume
23 from what you said the action was brought in the name
24 of the union.

25 MR. RENWICK: No, sir, it wasn't. It
26 was brought in the name of Polakoff and certain others,
27 not in the name of the union.

28 THE COMMISSIONER: Were they members
29 of the union?

30 MR. RENWICK: They were members of the



1 International Ladies Garment Workers Union.

2 MR. POLLOCK: He was faced with the
3 Privy Council decision which held the collective agree-
4 ment wasn't enforceable. That was 1921, I think.

5 MR. RENWICK: Yes, but he points out in
6 Manitoba the Manitoba Court supported by the Supreme
7 Court of Canada managed to decide it was not against
8 public policy in the Province of Manitoba, for trade
9 unions to operate and be part and parcel of the structure
10 and they were not illegal in Manitoba.

11 MR. POLLOCK: It was the question of
12 whether the collective agreement was an enforceable con-
13 tract?

14 MR. RENWICK: He didn't go on to decide
15 that part. Once he decided the society itself was an
16 illegal combination in restraint of trade, he didn't
17 have to pursue the matter any further. He felt himself
18 bound.

19 The case he referred to was Robins
20 versus National Trust, where the House of Lords pro-
21 nounced on the colonies' courts, which happened to be
22 a year earlier and very much in his mind, but the whole
23 tenor and train of his case was it was unwise in the
24 province of Ontario for the courts to decide matters of
25 public policy, and if he could possibly have done so he
26 would not have held the society illegal in that sense.
27 I simply leave that one with you. I just want to refer
28 to the Rights of Labour Act in Section 2, where it says,
29 the trade unions shall not be deemed to be ineligible
30 because one or more of the objects are restraint of trade.



1 In my opinion it is a declaration of
2 what the Common Law was at the time in statutory form.

3 MR. POLLOCK: It also comes out under
4 the Canadian Trade Union Act, the original Trade Union
5 Act, as provided for a registration of trade unions in
6 Canada. I think they probably originally came in, I
7 have not got a copy, it was a long time ago.

8 MR. RENWICK: It was away back in 1906
9 or earlier. It is, and he referred specifically to
10 that case, what the law was in force in the Province
11 of Ontario pointed out the Trade Unions Act of Canada,
12 while it was in force in Ontario, was not applicable
13 to this situation at all, and he specifically stated
14 in his opinion that that was the only statute in force
15 in Ontario, purporting to deal with the status of trade
16 unions, and not applicable in this case at all. So he
17 was dealing with a picture untrammelled by statute law
18 and he was stating the Common Law of Ontario. He was
19 concerned to hold them an illegal organization, but
20 obviously against his better judgment he felt bound.

21 THE COMMISSIONER: Were there previous
22 judgments in Ontario declaring that? Does he quote any?

23 MR. RENWICK: No, sir, he doesn't quote
24 any preceding cases. What he does is refer to 1792 in
25 the introduction in Ontario, the historical introduction
26 into Ontario of the Law of England, as it was in 1792.

27 He goes on to point out all those long
28 line of statutes repealed in England in 1825, and in
29 fact these weren't repealed in Ontario until 1902 or
30 some such period, even though they have probably fallen



1 into disuse.

2 THE COMMISSIONER: He didn't try to
3 take the view that those particular statutes were in-
4 applicable to the conditions?

5 MR. RENWICK: No, he simply in 1928
6 said, "At last in 1902 they ceased to have any part in
7 the law of the Province of Ontario and there was no
8 statutory law in Ontario of any kind."

9 THE COMMISSIONER: For instance, the
10 law of England in 1794, the wages were fixed by the
11 Justice of the Peace.

12 MR. RENWICK: I am not sure. Many of
13 those statutes simply fell into complete disuse.

14 THE COMMISSIONER: And were not appli-
15 cable here?

16 MR. RENWICK: And never put in issue.
17 But he did, from the historical record point of view,
18 clear the field to show his decision was based on the
19 Common Law at that time.

20 THE COMMISSIONER: It was always doubt-
21 ful under Common Law that a joint action for the benefit
22 of wages or working conditions was an offence. That
23 has been questioned, because the question arises because
24 of the early period in which the statutes were enacted.
25 It certainly goes back to 1348 at the time of the Plague.
26 That was the Statute of Labourers, but in any event there
27 is no doubt at all you see the development over the
28 centuries, as well as the acceleration in the 19th century.

29 MR. RENWICK: That is right. In any
30 event, sir, I simply think in my view this was the



1 position immediately prior to the Rights of Labour Act
2 and the Labour Relations Act, that the right to belong
3 to a trade union is part of the larger right of the
4 freedom of association in our society, and that right
5 existed at that time and the statutes didn't confer
6 that right on anyone, and the Rights of Labour Act in
7 Section 2 is certainly simply declaratory of that right.

8 The second right, the right to strike
9 on the basis -- the case I refer to here is an English
10 case but I am satisfied that this is applicable as a
11 statement of the Common Law in Ontario again, at the
12 time immediately prior to the Rights of Labour Act and
13 Labour Relations Act. It is the case of Gosney versus
14 Bristol Trade and Provident Society.

15 MR. POLLOCK: Have you the citation?

16 MR. RENWICK: It was rendered in 1909,
17 1 King's Bench, at Page 901.

18 THE COMMISSIONER: This is in England?

19 MR. RENWICK: In England. This was
20 the decision of the Court of Appeal in England and the
21 part which I felt was particularly pertinent to the
22 point I want to make, is the judgment of Lord Justice
23 Fletcher Moulton, at Page 922 of that report, and while
24 this is not a verbatim extract, the substance is here
25 and should it find favour for further consideration no
26 doubt --

27 THE COMMISSIONER: He was a very able
28 man.

29 MR. RENWICK: Yes, sir. He had this
30 to say: "The fallacy of the defendant's argument," and



1 this was the Bristol Trade and Provident Society which
2 was questioning the jurisdiction of the court in a claim
3 made by Mr. Gosney who had been a member of that society,
4 for two shillings and sixpence, sick pay due at that
5 time.

6 MR. POLLOCK: It was largely an internal
7 problem, a union member against a union?

8 MR. RENWICK: That is right, but it
9 was involved in the question of striking. This question
10 came up and he had been denied the pay, because he did
11 not abide by the rules of the society, and there had
12 been a labour dispute and Lord Justice Fletcher Moulton
13 has this to say: "The fallacy of the defendant's argu-
14 ment lies deeper. It proceeds on the proposition that
15 strikes per se are illegal or unlawful by the Law of
16 England. There is no trace of any such doctrine during
17 the centuries when the Common Law of England was formed,
18 nor until the end of the 18th Century. This was not due
19 to any friendliness towards freedom of action on the
20 part of the workmen in this respect. On the contrary,
21 during the 17th and 18th centuries a long succession
22 of legislative enactments were passed, restricting with
23 a severity which shocks our modern ideas, of demands on
24 the part of workmen to better their conditions of
25 labour. Yet, during the whole of this period no court
26 treated combinations to better the conditions of labour
27 as being contrary to Common Law." I think after the
28 legislation swept away all these statutes by the Act of
29 1825 --

30 THE COMMISSIONER: The real statute



1 was 1799. It created the worst condition in English
2 history and they were all repealed in 1825.

3 MR. RENWICK: In 1825, yes.

4 MR. POLLOCK: Really 1824.

5 MR. RENWICK: This invasion is suspicious.
6 That is the bringing into the Common Law something new
7 at that late date. This invasion is suspicious and ever
8 since then the weight of authority is against these
9 strikes per se, which are combinations neither for
10 accomplishing an unlawful end nor for accomplishing a
11 lawful end by unlawful means.

12 I think that is a succinct statement
13 of the position in the Province of Ontario at the time
14 immediately prior to 1944.

15 Now, on the question of right to picket.
16 I refer but will not quote from it, the famous case of
17 the TaffyVale Railway versus the Amalgamated Society of
18 Railway Servants. It is cited in the 1901 appeal cases
19 at Page 427.

20 It was a case involving an injunction
21 and which went adverse to the trade union at that point.
22 The substance of the case was whether or not the trade
23 union could be sued in its registered name, but that was
24 not the consequences which flowed from the case.

25 It is quite clear that Trevelyan, in
26 his history of England, I should have brought the quo-
27 tation from his history of England, he makes this point
28 -- not in these words but he mentions this point -- that
29 it is very significant that the TaffyVale Railway
30 position of 1901 was then followed by the general



1 election in England of 1905, and it was at that election
2 that the Labour Party returned fifty members to the
3 House of Commons in England. In 1906 he makes the dir-
4 ect connection between the events that in 1906 the
5 Trades Disputes Act was passed, dealing with the question
6 of picketing, and my submission, which I think is sup-
7 portable is that the section of the Trades Disputes Act
8 dealing with picketing was simply again a declaratory
9 statement of what the Common Law was at that time.

EM 10 THE COMMISSIONER: How would you say
11 the beginning of picketing -- what would you say they
12 were? I must confess I have not struck a history of it.
13 It seems to me it was inevitable in the early statutes,
14 or early part of the 19th century, where men stopped
15 their work. The one place they had to go was the pithead
16 and the doors of the foundry and stand around there and
17 try to persuade their fellows to join. At that time
18 eventually, and what was almost inevitably, it worked,
19 and from that you get the concept of the line over
20 these years.

21 MR. RENWICK: I am sure that must be.
22 I don't know either, but I can speculate. That is how
23 it was that certain men who were working in a colliery
24 or a railway, or any other mill, objected to certain of
25 the conditions. They tried to persuade their fellow
26 workmen to go along with them. They probably tried
27 every possible means of persuasion right up to coercion
28 was used to force their views.

29 THE COMMISSIONER: You get it here and
30 there in a historical reference.



1 MR. RENWICK: I would not know, sir,
2 but the Trade Disputes Act stated in that case it shall
3 be lawful for one or more persons, acting on their own
4 behalf, or on behalf of trade unions, or individual
5 employer, in contemplation of a trade dispute to post
6 at or near a house or place where a person resides, or
7 works, or carries on business, if they have not settled
8 their dispute, persuade any person to abstain from work,
9 that is in a fair way.

10 And that is simply a declaration of
11 what the Common Law of England was and what the Common
12 Law of the Province of Ontario was.

13 THE COMMISSIONER: You would have to
14 qualify that by saying they couldn't create offences
15 by blocking the highway, so they had a right to commun-
16 icate by not violating any of the Criminal Law or commit
17 a tort.

18 MR. RENWICK: I would agree with that,
19 because in our Section 366 of the Criminal Code we have
20 lumped together with the watching and besetting, the
21 obstruction of the highway, which has been part and
22 parcel of the picket problem. That is, the obstruction
23 of the right of others to use the common right of way
24 and not to have their way impeded by a picket line.

25 MR. POLLOCK: At the same time as Taffy
26 Vale, you have your Locke and Wilson, dealing with the
27 provisions there of watching and besetting, and the in-
28 terpretation of wrongfully and without lawful authority,
29 which is really the predecessor of our Section 366 of
30 the Code.



1 MR. RENWICK: I think it is fair to
2 say that Section 2 of Section 366 of the Code is simply
3 a proviso inserted ex abundanti cautela, on the right
4 of picketing.

5 MR. POLLOCK: Oh, they had it left out
6 for several years. When they changed the code it was
7 out for a considerable period of time and then came back
8 in.

9 MR. RENWICK: Yes, but again I have
10 the sensation it was always with peaceful picketing as
11 such has always been in that enactment of the section of
12 the Criminal Code, was never designed to eliminate what-
13 ever is included in the term, "peaceful picketing."

14 MR. POLLOCK: Its effect was to clarify,
15 I suppose, the definition of watching and besetting and
16 saying it is contrary doesn't run to watching and be-
17 setting.

18 MR. RENWICK: That is right.

19 THE COMMISSIONER: And also the case
20 word "persuade" was not in the early statutes.

21 MR. RENWICK: That is the point I was
22 going to make. Section 2 of 366 simply refers to peaceful
23 communication of information but leaves out the other
24 sections of trade disputes.

25 THE COMMISSIONER: This is absurd.
26 What kind of information would you convey if not to be
27 persuasive? Of course that is the whole object of con-
28 veying information in that context, isn't it?

29 MR. RENWICK: Well, I think there is
30 a distinction, sir, my impression now is that the basis



1 and almost the subconscious basis of the courts here,
2 under the Judicature Act is to limit picketing to a key
3 number of pickets, and I think the fair statement is
4 nowhere is there anything which speaks about numbers of
5 pickets at all.

6 MR. POLLOCK: Nowhere is there anything
7 that speaks about picketing.

8 MR. RENWICK: Right, but there is
9 watching and besetting and again it is because no statu-
10 tory reference, simply because the Common Law as I be-
11 lieve it is, has not stated it to be so. There is no
12 statutory statement about it. You have Common Law,
13 right, but under the Judicature Act you have injunctions
14 granted where a court assumes this in some way gives the
15 right to limit pickets.

16 THE COMMISSIONER: Isn't that just a
17 qualification of the right to restrain what seems to be
18 actual or probable consequences of a destructive nature?

19 MR. RENWICK: I think there is a dis-
20 tinction between the two positions, sir, I think the
21 inference is that where pickets are limited to two at a
22 gate of a plant, or four at a gate, whatever the number
23 the court orders, that the opportunities for the peaceful
24 obtaining or communicating information had almost elim-
25 inated the articulating of the discussion between people
26 going in and out of the plant, but has limited it to the
27 conveying of the information on a sign or the handing
28 out of a billboard, folder or leaflet of some sort, and
29 it has prevented people getting into actual discussions
30 of the difficulties.



1 THE COMMISSIONER: Theoretically I sup-
2 pose it does, but realistically I think the object of a
3 picket line is not to communicate -- primarily not to
4 communicate information. We had several people who re-
5 vealed the fact that they look upon that as one of the
6 instruments of not only persuasion, but coercion.

7 MR. RENWICK: I was coming onto that,
8 sir. I think that the shrinkage of the right to picket,
9 which has occurred to us, it is more or less a nominal
10 operation which is permitted and it has, in fact, shrunk
11 the Common Law.

12 THE COMMISSIONER: The initiation of
13 what you call the picket line shows that they have es-
14 tablished an imaginary line and the influence is not for
15 the publicity at all but to persuade the trades workers,
16 either you or those belonging to the union who did not
17 strike.

18 MR. POLLOCK: That is what Mr. Balek
19 in the Tilco strike argued as the meaning of picketing
20 and it is only after going through a considerable number
21 of dictionaries -- and this was running through them,
22 the common thread -- is dissuading workmen from working
23 there, or people on the job from continuing to work.
24 That was his position in that case which wasn't accepted.

25 MR. RENWICK: That is right, but picket-
26 ing from the point of view -- that is the connection of
27 the group of people who were employed in the plant and
28 now engaged in picketing -- in the absence of a court
29 order limiting their number, their object is to bring
30 the maximum permitted amount of public pressure or



1 support for their views. The maximum.

2 THE COMMISSIONER: Persuasive action of
3 some sort, persuasive information. That is true, on the
4 other hand don't you think we have more or less got the
5 feeling that in the conception of a picket line today,
6 the difficulties are not the man refusing to go in be-
7 cause he wants to assist his fellow workers, he says,
8 "We won't cross a picket line." That has been a develop-
9 ment of great importance because they feel that is the
10 sign of betrayal, something of that sort.

11 MR. RENWICK: Yes, it certainly is and
12 those who do cross a picket line are subject to severe
13 castigation by other members of the Trades Union movement
14 as such. I wasn't thinking so much --

15 THE COMMISSIONER: I don't mean to chal-
16 lenge your position, but that is the way it strikes me,
17 the evolution of conduct has resulted in this.

18 MR. RENWICK: The conception of honour-
19 ing the picket line.

20 THE COMMISSIONER: That has become a
21 symbol.

22 MR. RENWICK: Only become a symbol be-
23 cause the picket line has been shrunk to such an ineffec-
24 tive instrument in a dispute which is taking place be-
25 tween the union and employer in a particular plant, it
26 is the reaction of other unions to the picket lines to
27 say, "We will make it effective. We will make it effec-
28 tive as if it were not an imaginary line but a real line
29 and we will not cross that line."

30 THE COMMISSIONER: I think it is coming



1 to that.

2 MR. RENWICK: To the extent one union
3 will honour the picket line of another union.

4 THE COMMISSIONER: Some do and some
5 don't. We have reached a point where there is often a
6 specific provision in a labour agreement that either they
7 will or won't respect.

8 MR. RENWICK: And Sault Ste. Marie just
9 recently they did respect the picket line of the Brick-
10 layers' Union, and the result was the settlement was
11 reached. Again a settlement in an unusual situation,
12 but a settlement was reached because of the honouring
13 of the picket line.

14 MR. POLLOCK: They allowed, of course,
15 that wasn't their desire at the time, they alleged it
16 was not their desire to respect the picket line, it was
17 their desire to go to work but were afraid of the con-
18 sequences.

19 MR. RENWICK: Yes, there were only half
20 a dozen or ten or twelve bricklayers.

21 THE COMMISSIONER: But the unions who
22 worked with them did not respect the line. It was the
23 Railway men who respected the line and they said they
24 did that because of the threats.

25 MR. POLLOCK: The Steelworkers crossed.
26 The steelworkers with seven thousand men crossed the
27 line.

28 MR. RENWICK: They weren't out of work
29 because the plant shut down.

30 MR. POLLOCK: Yes, because they



1 couldn't operate without the trains.

2 THE COMMISSIONER: And it was the refus-
3 al of the railwaymen to cross the picket line that
4 stopped the steelworkers.

5 MR. RENWICK: That stopped the steel-
6 workers? Well again I simply assert again that the right
7 to picket was a Common Law right and it was stated for
8 practical purposes in that section of the Trades Dispute
9 Act.

10 Now, therefore, to sum up this oper-
11 ation, in my submission, sir, I simply want to make
12 certain that in the context of the discussion which is
13 taking place about the re-structurizing of arrangements
14 within the community for the settlement of these matters,
15 that the position as at the time when the last general
16 settlement was reached, should be clearly restated so
17 the position of the individual in the society, a member
18 of the Trades Union, is not confused but recognized at
19 Common Law.

20 He had these rights, the right of free-
21 dom of association, the right to strike and the right to
22 picket, that the Labour Relations Act if anything simply
23 substituted procedural restrictions on those rights, in
24 return for a statutory recognition of the obligation on
25 the employer to bargain collectively.

26 MR. POLLOCK: Let me clarify that in my
27 mind. On the question of picketing so far as it relates
28 to Labour Relations Act, there is nothing that speaks of
29 picketing. I don't think they mention it anywhere, so
30 it only comes in indirectly as a means or method of



1 enforcing the strike.

2 Now the Common Law aspect of picketing
3 in Canada has certainly been modified before 1943, by
4 the watching and besetting provisions of the Criminal
5 Code, so that picketing that amounted to any of these
6 prohibitions under the watching and besetting aspect,
7 with conduct not saved by the saving clause, would have
8 been prohibited in those cases by the code. Would you
9 agree with that?

10 MR. RENWICK: I take -- let me go at
11 this this way. This is a matter that fascinated me in
12 England. In the courts any question like this, the
13 Common Law covered all fields of law including the
14 Criminal Law. It was Common Law they were talking about
15 so we don't have the situation where statute law is
16 governing the criminal field in Canada, because of Con-
17 federation, and of course all throughout there was no
18 such thing as Federal Common Law and the Criminal Law
19 would have to be by statute.

20 THE COMMISSIONER: There is a statute
21 preserve in every Common Law.

22 MR. RENWICK: Yes, it did, but to the
23 extent it felt that the matter -- it was a statement of
24 what the Criminal Law was. It is my view of Section 366
25 or whatever, it was really part and parcel of a statement
26 of what the Common Law position was.

27 THE COMMISSIONER: There is nothing to
28 prohibit you from going to talk to people, to persuade
29 them rationally to do something. I think that is what
30 you mean. You can attend for the purpose of



1 communicating information and that purpose was persua-
2 sive, and no objection possible to it to try and persuade
3 a man to accept your views on something that was legal.

4 MR. RENWICK: I take it Section 366 was
5 not a section of the code to be interpreted in a vacuum
6 at all. The court dealing with Section 366, so far as
7 related to picketing, was to be interpreted not in the
8 way a statute is normally interpreted, but to be inter-
9 preted as being the limitations in place upon the Common
10 Law right of picketing, whatever the Common Law right
11 was. You have to clearly understand what the Common Law
12 right was and then give meaning to Section 366 in light
13 of the Common Law restriction. You don't just go to
14 Section 366 and say, "We will enlarge 366 and curtail
15 picketing." You give it the most limited application
16 possible to preserve the fundamental right of picketing
17 embodied in that section.

18 THE COMMISSIONER: To complete that you
19 have to define picketing, what is picketing at Common
20 Law?

21 MR. RENWICK: Well, as I say, the state-
22 ment in Section 1 of the Trade Disputes Act of 1906 is
23 my view of the Common Law statement on picketing.

24 THE COMMISSIONER: To communicate in-
25 formation?

26 MR. RENWICK: That is right.

27 THE COMMISSIONER: Well, there is no
28 law against the communicating and it really depends on
29 the means by which you attempt to communicate.

30 MR. POLLOCK: That brings me in mind



1 of the cases of when we talk about picketing without a
2 definition. We conjure up visions of what has been done
3 with picket lines and some of them are the peaceful two,
4 three, or four men walking with a sign that communicates
5 truthful information. Those are characterized as peace-
6 ful picket lines and those other individuals who parti-
7 cipate in picketing and engage in some of the conduct
8 that is now presently prescribed by 366, and that is the
9 type of conduct you would agree is still unlawful, and
10 unlawful in Common Law using violations, threats, inti-
11 midation, persistently hiding tools, parking in drive-
12 ways, watching and besetting where a man lives or works,
13 blocking or obstructing. That is the kind of conduct
14 prohibited by 366 and which by Subsection 2 is excepted,
15 the obtaining and communicating of information.

16 MR. RENWICK: I would agree with that.
17 I think the derivation probably goes back to the Chapter
18 129 of the Act of 1825, which prohibits or has prohi-
19 bitions for future conduct and was confined to endeavours
20 by force, threats, intimidation, molestation or obstruc-
21 tion to effect wages or hours. Those are the prohibited
22 forms of conduct and I think basically are the prohibited
23 forms of conduct under the code.

24 MR. POLLOCK: All you are saying is
25 the right to picket wasn't given by the Labour Relations
26 Act. It doesn't even purport to be given and the only
27 restriction would have been in the Criminal Code at that
28 time, that might have prohibited that conduct, the re-
29 striction on the picketing was in the Criminal Code,
30 which amounted to watching and besetting for Criminal



1 purposes.

2 MR. RENWICK: Yes, I would agree.

3 THE COMMISSIONER: The question also
4 arises, the statutes of 1874 or 1875, I forget which one,
5 it is contained only in the language communicating or
6 receiving information, and then they added the word
7 persuasive. That was added in 1906 and they had con-
8 strued those words "information" as to exclude the use
9 of that persuasion. "Persuasion" was too close to in-
10 timidation apparently.

11 MR. RENWICK: That is the line.

12 THE COMMISSIONER: It was in the inter-
13 pretation of that statute that the Courts of England
14 generally showed a very very limited conception of the
15 changes that were taking place in the social attitudes.

16 MR. RENWICK: That may well be but I
17 would doubt whether that was so in the context of
18 Trevelyan's remark in the history that the Trade Disputes
19 Act was automatic.

20 THE COMMISSIONER: Did he write a social
21 history of England?

22 MR. RENWICK: Just the "History of
23 England."

24 THE COMMISSIONER: He had also a social
25 history.

26 MR. RENWICK: The history, one by G.M.
27 Trevelyan. I undoubtedly can pick that quotation out.

28 THE COMMISSIONER: I am just wondering,
29 I have his work on social history.

30 MR. RENWICK: I had a feeling it was a



1 direct response to the Parliament of England to the
2 actual situation which existed at that time, showing
3 very clearly --

4 THE COMMISSIONER: When did he live?
5 Did he -- At the beginning of this century was he
6 alive?

7 MR. RENWICK: Oh, yes.

8 MR. POLLOCK: He must have been.

9 THE COMMISSIONER: I don't know why he
10 must have been.

11 MR. RENWICK: He deals with this section
12 of the Act. He deals with the 1906 Taffy Vale case in
13 1901. The election in 1905 and the 1906 enactment of
14 the Trade Disputes Act, which leads me to believe in
15 fact it was an appropriate response by parliament to the
16 existing political and economic and social situation at
17 that time.

18 THE COMMISSIONER: I don't think there
19 was any doubt of that.

20 MR. POLLOCK: The only question I have
21 on this section is the use of the word "right". I
22 wonder whether you use that as a term of "right" or
23 whether you make distinction between rights and liber-
24 ties. The Act, going back to Labour Relations, doesn't
25 say you have the right to strike, you go through the
26 procedures and otherwise the strike is unlawful. It
27 doesn't say anywhere that there is a right to join a
28 trade union.

29 MR. RENWICK: I am using it in the
30 terms of liberties, the doing of the Act of the



1 collective withdrawal of labour is not something which
2 would be vested with any legal concept.

3 THE COMMISSIONER: It is in an area
4 that is not restricted.

5 MR. RENWICK: Yes, it is a freedom or
6 liberty rather than a conferred right, and this is the
7 substance of my remarks. I want people to be certain
8 these were freedoms or liberties at the time the struc-
9 ture was reviewed in the forties and carried through to
10 the sixties.

11 It may be perfectly obvious to you this
12 is so, but I am very impressed that many people do not
13 realize this and in some way or other they think the
14 whole of the structure of the rights of labour is con-
15 ferred by the word of statutes, and not within the frame-
16 work of traditional Common Law liberties, and we must
17 approach any curtailment of the liberties fully conscious
18 of the facts we are curtailing, and not granting, if we
19 propose other solutions to these problems.

20 MR. POLLOCK: There were certainly other
21 benefits granted to the Trade Union movement by this
22 type of legislation. The right to certification by
23 majority representation.

24 MR. RENWICK: I don't want to put a
25 narrow view, when I say the right to collective bargain-
26 ing, but the collective bargaining process committed
27 all these things, the giving of a position to bargain
28 along with the obligation imposed on both parties to
29 bargain in good faith.

30 MR. POLLOCK: And the protection of



1 the sections in the Rights of Labour Act in connection
2 with sue-ability of a trade union. Certainly as oper-
3 ated today it has some protection to the trade unions
4 against action that could have been brought against them
5 in their own name.

6 MR. RENWICK: Again it is the context
7 on which you stated that position. I would like to think
8 about putting it the other way. The trade union at
9 Common Law, or any association of individuals, was not
10 sueable as such. You sued the individual.

11 MR. POLLOCK: It developed slowly with
12 some legislation. The Taffy Vale became sueable in
13 England.

14 MR. RENWICK: If they went through the
15 registration procedure. It wasn't designed to provide
16 protection for them, for the associations, not designed

17 --

18 MR. POLLOCK: You can follow it up to
19 the Officers and Masters union, where the House of
20 Lords discussed the question of the membership and union
21 and the sue ability under the circumstances. Then come
22 to Canada and there are several cases in British Columbia
23 before their legislation and in Manitoba and in our prov-
24 ince, the Nipissing Hotel case. It says because of the
25 position of the union itself and the Labour Relations Act
26 the status they have is they have achieved an entity
27 status, and it is the prescription in the Rights of Labour
28 Act which prevents the right to action being maintained
29 against them. If that had not been there they would have
30 been a sueable entity.



1 MR. RENWICK: As I say, the development
2 of the trades idea in the absence of the Rights of
3 Labour Act, the courts would have evolved a proposition
4 where such associations would be sueable entities. It
5 is not my view of how it would have taken place.

6 THE COMMISSIONER: It could apply, but
7 perhaps you wouldn't put them in sueable class?

8 MR. RENWICK: This is where politics
9 is coming in and the courts are operating on a public
10 policy basis when the indication is made that the courts,
11 in the absence of the Prohibition and Rights of Labour
12 Act, would have by now recognized the union as a sueable
13 entity. That is the court entering into an area of
14 public policy which in my submission would be most un-
15 wise to enter into, because I was going to go back to
16 the question briefly of the corporation, but I will deal
17 with it now.

18 What in fact is happening, when the
19 court comes up with the trade unions should be sueable,
20 it is a corporation, just the way a corporation is sue-
21 able, the particular union should be in the context of
22 law and the context of the attitude conveyed by that
23 expression, it is part of the emotional world. It in-
24 dicates still somehow or other, even though trade unions
25 are free to join them and belong to them, it still some-
26 how or other conveys they are outside the ambit of the
27 law, and somehow or other not answerable within the
28 jurisdiction of the society.

29 THE COMMISSIONER: Why shouldn't they
30 be?



1 MR. RENWICK: Would you look at it this
2 way. What could be achieved? What advantage would it
3 make if the Trade Union itself was subject to suit?

4 THE COMMISSIONER: Take the action in
5 Quebec today where a judgment for three million dollars
6 was obtained for the destruction of a very expensive
7 mining plant in Gaspé. You couldn't see the poor work-
8 men who were involved in it paying for it. They have
9 sued the union and why should the society as a whole
10 suffer such a loss as that and have the guilty party
11 escape?

12 MR. RENWICK: I would not comment on
13 Quebec because I don't know what the position is. The
14 fact of the matter is they did recover a judgment against
15 the union.

16 THE COMMISSIONER: They could sue the
17 union.

18 MR. RENWICK: What I am simply saying,
19 in the Province of Ontario no such situation has arisen
20 at all, not any occasion whatsoever.

21 MR. POLLOCK: It can't arise because of
22 the Rights of Labour Act.

23 MR. RENWICK: No, I am thinking of the
24 destruction.

25 MR. POLLOCK: There are several cases
26 that have arisen. There have been all kinds of cases
27 where damage has been caused.

28 MR. RENWICK: What you are suggesting
29 is you impute to the Trade Union the action of certain
30 persons, who are members. You are suggesting to impose



1 liability on the entity for the acts of a few persons
2 who are members.

3 THE COMMISSIONER: Certainly, if those
4 men are the officers of the company. I know a case in
5 the Ford Plant. In one action they refused to allow
6 anybody to enter the engine room. As a result of it the
7 pipes froze. It was in the winter time. It cost two
8 hundred thousand dollars to replace. That was done by
9 the union acting with its officers, and acting as a body
10 and they took that position and action was brought, but
11 it was either abandoned or something became of it, which
12 I don't know.

13 Why shouldn't that group pay for the
14 actual loss it caused? We have a submission by a very
15 prominent labour union in this company accepting that
16 responsibility. They say, "We don't claim anything. The
17 individual can't claim, if we are responsible we ought to
18 be liable for it."

19 MR. RENWICK: But not, sir, in isolation
20 from all the other aspects of this problem.

21 THE COMMISSIONER: It is one element.
22 It is one feature of the relations I quite agree, but
23 assuming that you can't surely excuse that, because they
24 didn't get full permission to get two thousand men on a
25 picket line?

26 MR. RENWICK: Well, sir, I would simply
27 say if there are instances in which the union, as such,
28 is directly responsible in a way the corporation is
29 responsible --

30 THE COMMISSIONER: But the corporation



1 is responsible for the acts of its officers generally,
2 in the course of the duty.

3 MR. RENWICK: Only if done in the course
4 of their employment.

5 THE COMMISSIONER: And a strike is part
6 of the activities of the body as you demonstrate?

7 MR. RENWICK: Yes, but you have to make
8 the distinction as to whether or not there is a direct
9 connection between the executive officers of the assoc-
10 iation and the damage which is caused.

11 THE COMMISSIONER: Oh, I quite appreciate
12 the problem but if a man took the action on the part of
13 his superiors it should be liable just as any corporation.

14 MR. RENWICK: Let me ask this question.
15 Is there any union case in the Province of Ontario where
16 such and such has been brought, where the responsibility,
17 the connecting link has been clearly established and the
18 court has said irregardless of that, we are sorry, you
19 have no claim.

20 THE COMMISSIONER: We have never had an
21 action because the law says you can't.

22 MR. POLLOCK: There has been in the area
23 not covered by the Rights of Labour Act that were success-
24 ful, and damage was recovered by the arbitration tribunal.

25 THE COMMISSIONER: That was under the
26 Labour Relations Act. The damages were determined under
27 the arbitration provided by the agreement.

28 MR. POLLOCK: The only point I am making,
29 in that case they had several negotiations between the
30 union and damages were caused largely because of the



1 action that was taken, which was started and counselled
2 by the union. They didn't make any attempt to tell the
3 people to go back to work and stop doing this. I think
4 the arbitrator was Alexander, and he held they had not
5 done anything to save the union, to demonstrate they were
6 responsible for this type of action, and in fact they
7 had counselled this action, which resulted in the damage
8 and the union was held liable. But going back to the
9 question of whether the Rights of Labour Act does anything.
10 In British Columbia many cases before that Act was
11 changed, which held because of the Labour Relations Act
12 or Trade Unions Act in British Columbia which gave all
13 kinds of rights to the trade unions in the sense it was
14 the bargaining agent, and it did this and that and recog-
15 nized by legislation in so many capacities as a union,
16 they were sufficient entity to be sued and there are a
17 couple of cases involving a laundry.

18 That is the same situation that existed
19 in Manitoba and I submit it appears the same situation
20 here in the Nipissing Hotel case, with the exception the
21 Rights of Labour Act intervened and says you cannot sue
22 the union.

23 MR. RENWICK: The Rights of Labour Act
24 leaves open that question. The Trade union was not to be
25 made a party to any action in any court, unless it may
26 be so made a party irrespective of any of the provisions
27 of this Act or Labour Relations Act.

28 MR. POLLOCK: The argument is they are
29 not a corporation, not a person known to law. The only
30 way they can be a person is by all the inferences drawn



1 by that Labour Relations Act.

2 MR. RENWICK: There are no inferences
3 which can be drawn from this statute. If you accept
4 the proposition that this is not doing anything other
5 than affirming the Common Law position, but that is all
6 that happens, right? It is quite open to a court in the
7 Province of Ontario to use a developed system of juris-
8 prudence to arrive at the position where, if in the
9 process of adjudication of disputes it makes sense to
10 do so.

11 THE COMMISSIONER: The question is the
12 desirability of holding a union to the damage that is
13 caused by its actions.

14 MR. RENWICK: My point, sir, is that
15 you don't impose by statute the obligation to be respon-
16 sible as a corporation, or in the equivalent term of
17 trade unions, unless there have been a demonstratable
18 vacuum in the law.

19 THE COMMISSIONER: You would have to
20 prove that. Anyway you would have to prove it in the
21 ordinary requirements of holding a corporation liable.
22 It can only occur by the actions of individuals and you
23 might say this is reversing the ordinary course of
24 things. You might say a prima facie responsibility of
25 the union unless it demonstrated -- I wouldn't say dem-
26 onstrated -- unless it satisfies the court that the
27 action taken was taken individually by members of the
28 union, without the approval or sanction or authorization
29 or even the concurrence of their action by the officers.

30 MR. RENWICK: What I am saying, and I



1 am very pleased we are having this exchange, because
2 this is the same principle about the right to the law,
3 with their liberties and freedoms, people have these.
4 This is the same problem that the argument is being put
5 and constantly being put, and we must be able to get at
6 the union as an entity. What is really circling that
7 word or statement when it is being made is the creation
8 of the impression in the minds of many people, that
9 despite all the past history that the trade union in
10 fact somehow is tainted as being extra legal or outside
11 the law.

12 THE COMMISSIONER: I wouldn't say that.
13 Here in the last century and a half, certainly the second,
14 a new body of action has arisen, which wasn't present
15 before. They didn't have factory union people, they had
16 half a dozen people who would do something and something
17 more is required. When you say, "Here is a union," it
18 was the creation of a union, which was so to speak some-
19 thing new, which has to be dealt with anew and hasn't
20 been dealt with in the past. And since in fact the union
21 controls many and controls their action, it is respon-
22 sible in the sense of being accountable to its members
23 for formal action by the officers, or the controlling
24 board.

25 When you have that acting in the same
26 manner as a corporation does act, which is simply the
27 same kind of group brought together under an idea created
28 by law, they can be sueable.

29 It seems to me it is ostensible you
30 should treat them in the same way. Now, incorporation



1 calls for a certain legislative act. You see that in
2 the original incorporation or creation of corporations
3 in the legal field. The university was from the begin-
4 ning a corporation because it required the creation from
5 several sources.

6 MR. RENWICK: Yes, sir, but this seems
7 to me to be easy fundamentals.

8 THE COMMISSIONER: I agree it is funda-
9 mental.

10 MR. RENWICK: I can't argue your logic.

11 THE COMMISSIONER: My logic is very
12 simple. The courts of the country, in England and here,
13 weren't concerned with the question other than procedure
14 question. They couldn't see they had it in the church,
15 the ordinary church, although it consists of a body of
16 men recognized, with loyalties and you have to be very
17 chaste.

18 As a member of a union that body was
19 not recognized procedurally as a person who could be
20 brought into the courts. Why? Because the membership
21 was constantly changing. You are a member today and not
22 tomorrow. You get a judgment but the title to property
23 could not be vested in an amorphous group and the con-
24 sequence is that being negatable, from the point of
25 view of procedure, not substance, to considerations that
26 are called into a question of law from the point of view
27 of procedure, you could not take action against them.

28 Then in TaffyVale what the court seized
29 upon was the registration and the recognition of their
30 being able to have property, although it was actually



1 in the name of trustees, but the body of it -- and I
2 remember at the time of the church union -- this question
3 was adopted. Why can't we be treated as an entity? We
4 are the same as any union. What do you think it was, it
5 was simply in accordance with their fundamental policy
6 to keep hands off the labour unions.

7 MR. POLLOCK: I think we should have a
8 short break at this time.

9 ---Short recess
10

11 MR. RENWICK: On the question, sir, of
12 the corporation, the point I am making is this. I know
13 of no circumstances where the legislature of Ontario
14 has imposed the entity concept in order to make the
15 association a sueable one. It has granted the corporate
16 entity idea because citizens within the community have
17 wanted it. Despite any endeavour to analogize the power
18 a trade union may have in the Province of Ontario, at any
19 time that any union may have, there have been no, to my
20 knowledge, conclusive proof that the courts are not
21 capable, with the question you raise, sir, of a situation
22 where responsible officers have done themselves or dir-
23 ected the destruction of property, or the positiveness of
24 doing some act which would have the effect of destruction
25 of property -- I think in the Province of Ontario in the
26 total labour scene the number of occasions when that kind
27 of situation arises is a very limited number, and I know
28 of no case where a court has conclusively said the Rights
29 of Labour Act has the power to withhold a person respon-
30 sible for that damage, either in the Criminal court or



1 in an action for tort and a claim for damages.

2 MR. POLLOCK: Let me refer you to the
3 Nipissing Hotel case and other cases mentioned. The
4 only point I make, the only way you can compare this is
5 to give instances that the Rights of Labour Act in
6 Ontario is to take Common Law jurisdiction, which has
7 similar statutes, in effect, and that is the reference
8 I make to the British Columbia situation, which prior
9 to the enactment of the Trade Union Act in 1959 or in
10 1960 which does make them a sueable entity by statute,
11 there had been cases in that province prior to that
12 statute that had held that because of the powers and
13 the position of the unions, as reflected by the govern-
14 ment Labour Relations Legislation, they were in fact an
15 entity and were liable to suit as an entity, and that
16 was all set out in the judgment of our courts in Nipis-
17 sing.

18 MR. RENWICK: My point is simply I
19 would not want the Commission to be led astray on a
20 lesser proposition, that in some way something of real
21 substance hangs on this proposition of the Trade Union
22 Association being identified by statute, as some kind
23 of a sueable entity. I don't think any substantial
24 result or benefit flows from that, unless it is demon-
25 strated there is a vacuum in the working of the law.

26 THE COMMISSIONER: It has been held by
27 the Supreme Court under legislation almost identical,
28 with the exception of the section which forbids an action
29 against a corporation, it held the law of Manitoba did
30 not allow, in a sense of finding because of registration



1 an entity that could be made a property to the proceed-
2 ings.

3 MR. RENWICK: In a technical legal point,
4 not really the Rights of Labour.

5 THE COMMISSIONER: The union had been
6 made a party and the judgment against the union so in-
7 volved.

8 MR. RENWICK: The actual statute does
9 not preclude, does not preclude the operation of the
10 development of the Common Law if our courts are still a
11 live and vital element.

12 THE COMMISSIONER: That is the very
13 thing. Labour has raised its voice against courts creat-
14 ing new liabilities where they didn't exist in Common
15 Law, embarking on a question of policy. I think it is
16 good policy to make all groups liable for the damage
17 they cause.

18 MR. RENWICK: I just don't believe and
19 again, subject to the Nipissing case with which I am not
20 familiar, I am not suggesting you suddenly pass a general
21 statute of the Province of Ontario imposing this sueable
22 characteristic on associations, or persons, because there
23 may be one or two isolated instances in Ontario where
24 that has been proven.

25 THE COMMISSIONER: Then there would be
26 very little use of that if no violation of the rights by
27 a union. There would be no suits.

28 MR. POLLOCK: And you wouldn't object
29 to the repeal of that section of the Trade Union Act,
30 you say it is nothing, the rights of Labour Act?



1 MR. RENWICK: The rights of Labour Act,
2 as such, doesn't add anything.

3 MR. POLLOCK: If you take it out it
4 would make no difference?

5 MR. RENWICK: Unless there was some
6 reversion to point of law I may have overlooked, which
7 would permit it to be sued as an entity. I personally
8 do not think it is anything other than declaratory
9 and I would therefore agree with you.

10 THE COMMISSIONER: One benefit is the
11 corporation can hold property in its own name. Some
12 Labour unions in the United States are in the banking
13 business and all kinds of business, and they require a
14 corporate existence and I have no doubt that will be
15 followed in this country, if not already followed.

16 MR. RENWICK: All I am saying is the
17 demand for this incorporation concept to apply to trade
18 unions, does not arise from out of the association of
19 people who are joined together in trade unions. I am
20 saying any change that was made in the law would, in my
21 view, be the first time the law would be made that the
22 trade unions should be subject to that kind of a concept.

23 THE COMMISSIONER: Why shouldn't they
24 be subject on the view that everybody, every group, every
25 body that follows the law of the land ought to be ac-
26 countable for the damages he causes?

27 MR. RENWICK: I would not dispute the
28 logic of that. Let us have the instance which justifies
29 the fastening of a law of general obligations, in order
30 to cover one or two isolated instances. Why do we do



1 this?

2 THE COMMISSIONER: I don't say they ask
3 for concrete evidence that certain violations have been
4 made. We know some violations have been done. There
5 are serious violations and if those are exceptional then
6 only the exceptional corporation will be bothered, the
7 exceptional union will be bothered, not the generality
8 of them.

9 MR. RENWICK: I have made my point. I
10 leave it on the proposition that the cry for the incor-
11 poration of trade unions so they will be 'get-atable', as
12 I have said on another occasion, is simply a latter day
13 manifestation to create in the community that they are
14 responsible to the law. That there is some taint of il-
15 legality of what is going on.

16 THE COMMISSIONER: I want you to under-
17 stand I am not arguing a case against you, and I don't
18 want you to think it has any fixed opinion on any part
19 of this discussion.

20 MR. POLLOCK: I don't suppose you would
21 object to the comment that some of the people who are
22 suggesting incorporation are not doing it completely al-
23 truistically, but it is not only the fact they are not
24 conscionable, is not related to the fact there is some
25 kind of illegal taint. It is argued they have some bene-
26 fit granted to them by the Rights of Labour Act, which
27 says you are outside the law or above the law, and I
28 think it was Brady who has discussed that. Why don't
29 you want to be within the law?

30 MR. RENWICK: But they are not outside



1 the law.

2 MR. POLLOCK: They are not sueable.

3 MR. RENWICK: But they are not outside
4 the law. Nobody is suffering because a union is not a
5 corporate entity in that sense. I would certainly like
6 to go back. My understanding of the Rights of Labour
7 Act is the removal of that provision, if my understanding
8 is correct, would not alter one iota what the courts
9 would be saying, unless they attempted to argue the
10 very Labour Relations Act. Because they were certified
11 as a bargaining unit this gave them the status of the
12 public. But now, because of registration, they are
13 now sueable.

14 MR. POLLOCK: Which is precisely the
15 case in other jurisdictions in Canada.

16 MR. RENWICK: But the community of On-
17 tario, the whole community of Ontario including the
18 people, members of other corporations, management, or
19 trade unions, or any aspect of the community is going to
20 accept the proposition that being an organization, such
21 as a trade union, by direct act of those responsible
22 officers or its agents, or directly has caused damage
23 to property or persons, in some way it is a decision of
24 a court in the Province of Ontario it is not going to be
25 derogated as a decision.

26 The people in the Province of Ontario
27 are going to say this is a necessary decision. I don't
28 want, under the guise of solving some problem, to feel
29 it is required that all trade unions be subject to suit
30 in the courts. It is really no part of the predominant



1 problem faced by your Commission.

2 To put it in stark terms it falls in
3 the category of a red herring. I don't think it will
4 solve that many problems by doing it.

5 I would like to go on to another area
6 and that is the question of the injunctions. I would
7 like to deal with it succinctly if I can do so.

8 Let me state this principle again,
9 talking within the framework of the community of the
10 Province of Ontario. We all have the same interest in
11 the general security of our society, that is against the
12 damage to property, damage or injury to persons, vio-
13 lations, we are all interested in general security.

14 We are not interested in having out-
15 breaks of violations or damage caused to people. It is
16 part of the foundation of our society, but that is not
17 to say that there are not occasions when the law requires
18 a change in adoption, and I take the view that certainly
19 the injunction technique used by the courts is one which
20 requires a door to be opened.

21 It has become an instrument which is
22 not fulfilling the function it should be performing, I
23 think, quite validly in our society.

24 Let me deal principally with ex parte.
25 I leave that on the principle there is really no place
26 for the four-day ex parte injunction in our law. I
27 think we must get back to the principle that people are
28 entitled to be heard on such an application before a
29 decision is made, but that is not the real substance of
30 the injunction problem. I think it is important and a



1 really urgent matter, and has focussed a lot of attention
2 on the ex parte injunction as a sample of what is wrong
3 with the injunction procedure. The injunction which
4 concerns me is the one in the Tilco case and the one
5 extant in the Oshawa Times, and that is under Section 16
6 of the Judicature Act, the Interlocutory Injunction. I
7 would like to make that point perfectly clear. The ex
8 parte under Section 17 is entirely different than the
9 injunction under Section 16 of the Act.

10 There is no such thing as getting an
11 ex parte and continuing the ex parte at all. The ex
12 parte lasts its limit of four days and governed entirely
13 by the section, and Section 16 covers the other injunction.
14 That is the just or convenient injunction. I think that
15 distinction is significant because in the Oshawa Times
16 there was no ex parte, and in Tilco there was and that
17 is not the injunction which was before the court in
18 February last.

19 MR. POLLOCK: I don't understand when
20 you say Section 16, because 17 talks about Interim Injunc-
21 tions to restrain something and provides two days notice,
22 and you can have it under Subsection 3 ex parte if you
23 can demonstrate that. Where do you get the principle
24 they are two different animals?

25 MR. RENWICK: Section 16 is a different
26 injunction from 17.

27 MR. POLLOCK: Yes, but the injunction
28 obtained in Labour Disputes are under 17.

29 MR. RENWICK: But they can only exist
30 for four days, and at the expiration of four days that



1 is the end of the injunction, and the application which
2 then goes before the court, even though loosely referred
3 to as continuing the ex parte, is a de novo application
4 for an injunction under Section 16.

5 THE COMMISSIONER: What is the signi-
6 ficance?

7 MR. RENWICK: The significance of that
8 is the conditions under which the injunction will be
9 granted under Section 16, if they meet the tests of
10 being just or convenient, and the just or convenience
11 doesn't apply to the injunctions under 17.

12 THE COMMISSIONER: Assuming that, what
13 is your criticism?

14 MR. POLLOCK: Which is proper?

15 MR. RENWICK: Section 16 is the general
16 jurisdiction of the court and has nothing to do with
17 labour.

18 THE COMMISSIONER: I think equity in
19 the beginning did have authority to issue an ex parte,
20 if the circumstances demand it. If you had a picture
21 that was on the point of being destroyed, a valuable
22 painting which equity dealt with from the beginning,
23 all they would do is hold that destruction off.

24 MR. RENWICK: There is no reference in
25 Section 17 as to whether it is just or convenient.

26 THE COMMISSIONER: That may be, that
27 is perfectly clear.

28 MR. POLLOCK: If in 17, do you think
29 it would restrict the application of 17?

30 MR. RENWICK: Yes, I think it would



1 bring into play certain other factors. It would high-
2 light in the minds of the court the requirement that
3 there was an element over and above the injury to person,
4 or the damage to property, or a breach of the peace.

5 THE COMMISSIONER: Add to this, what
6 is the language you speak of, "just and convenience"?
7 Add that to 17, you wouldn't enlarge the scope in labour
8 matters.

9 MR. RENWICK: You would enlarge the
10 meaning of that. I am simply saying that the injunction
11 which is in dispute in the case is the one under Section
12 16. It has nothing to do with Section 17. The ex parte
13 under 17 was never at issue in the Tilco Plastics case.

14 THE COMMISSIONER: I think you could
15 answer this. You could apply for an injunction under 16
16 observing the ordinary procedures of giving notice.

17 MR. RENWICK: You can get one under 17
18 by observing the same procedure, without giving notice.

19 MR. POLLOCK: You have two days notice
20 under 17 and you have normally under 16, you would have
21 to give four days wouldn't you, maybe not?

22 MR. RENWICK: Two days for an interim
23 ex parte.

24 MR. POLLOCK: Ex parte with no notice?

25 MR. RENWICK: And two days for an interim
26 under Section 2 of Section 17, that is right.

27 THE COMMISSIONER: The significant thing
28 to me is that Labour Disputes is expressly provided for
29 by that Act.

30 MR. RENWICK: Oh, yes, I agree with that.



1 THE COMMISSIONER: There is a declar-
2 ation of the legislature which is very significant. The
3 question might have arisen if that hadn't been there,
4 where equity would proceed in a case of a labour dispute.

5 MR. RENWICK: Well, Section 17 in its
6 application is limited by a time factor. On the expir-
7 ation of the four days it has performed its function.

8 THE COMMISSIONER: I agree, but the
9 significance of that?

10 MR. RENWICK: The significance of it
11 is the injunction in 17 is interpreted as an injunction
12 granted to restrain a person in any act in connection
13 with a labour dispute, and the court looks at the question
14 of the breach of the peace, the injury to the person
15 or the damage to the property, and does not deal with
16 the proper question of whether it is just or convenient
17 that the injunction be granted.

18 THE COMMISSIONER: And you say the
19 four days is the maximum that should be granted in a
20 labour case?

21 MR. RENWICK: Under Section 17.

22 THE COMMISSIONER: Under the whole
23 series of sections?

24 MR. RENWICK: No, sir, under Section 16
25 the injunction can be carried on. That is the distinction
26 which I felt has to be made. The injunction under
27 Section 16 is the injunction which was an issue in the
28 Tilco Plastics case, and the problem with the injunction,
29 I believe, can be stated this way. What happens in fact
30 in such a situation is that the company says, "I realize



1 the benefits of the injunction are available to the
2 trade union," or the members of the trade union -- I am
3 speaking of most of the situations -- which are company
4 applications and the Tilco case happened to be a very
5 clear case of a situation where it was a legal strike.
6 There was no question of the illegality of that strike.

7 When the labour force was withdrawn the
8 company then applied to the court by issuing a writ
9 against the members for a permanent injunction. That
10 matter, as you know, never has come before the court
11 and is not likely to, so the company then goes to the
12 court and gets first an ex parte, and secondly an inter-
13 locutory injunction, after the expiration in that case
14 of three days. They get the interlocutory injunction
15 until trial, to maintain the status quo of the two
16 parties to the dispute.

17 Now what in fact the employer is ob-
18 taining when he goes to the court is not the prohibition
19 against a few people walking around his plant, with
20 signs, or a few people picketing up and down. It may
21 be a source of irritation to him that takes place, but
22 the substance of what he wants and the reason the com-
23 pany will go to the court is to, in fact, obtain the
24 decision of the court in such a way as will allow them
25 to operate their plant. That is what they are really
26 after.

27 THE COMMISSIONER: Let us accept that.
28 Is there any right in anybody to prevent that, say
29 physically first?

30 MR. RENWICK: No, I am not suggesting



1 for a moment -- we are all agreed we are not resorting
2 to damage to his tangible, physical property, or injury
3 to any person.

4 THE COMMISSIONER: That would include
5 obstruction.

6 MR. RENWICK: And the interference of
7 the person's rights, that is right. What he is asking
8 for is the operation of his plant. The only way where
9 there is a legal strike that he can operate his plant
10 is one of two methods. One, to bring a new labour force
11 into the plant, or by the introduction of technological
12 change to eliminate the labour force. If he can do
13 either one of these two things, as he surveys the situ-
14 ation with which he is faced, and he says, the company
15 says to itself, all right, we can get labour in here
16 to replace our labour force, or introduce technological
17 changes in our plant which will eliminate the labour
18 force. Then the company will go to the court for an
19 injunction because that is the one to choose.

20 THE COMMISSIONER: Why don't they act
21 without an injunction? Why don't they have open passage
22 through their gates or their entrance without obstruction?

23 MR. RENWICK: Why don't they? Sir,
24 because the injunction provides a very convenient method
25 for it.

26 THE COMMISSIONER: I am dealing with
27 before there is an injunction. Why do they ask for an
28 injunction if there is no permissible interruption or
29 obstacle being placed in their way of a free access and
30 exit to their plant?



1 MR. RENWICK: Simply because, sir, the
2 injunction is a very convenient way of doing it.

3 THE COMMISSIONER: If the picket line
4 is not justified in obstructing entrance and preventing
5 human beings and vehicles to pass and repass; why do
6 they go for an injunction?

7 MR. RENWICK: Because they want the
8 sanction of the court.

9 THE COMMISSIONER: To carry on their
10 own business?

11 MR. RENWICK: This is the point, they
12 are asking for this point indirectly and without it
13 being articulated in any way, they are saying we want
14 the protection of an order of the court so we can
15 replace the labour force in this plant.

16 THE COMMISSIONER: Why don't they re-
17 place it without an injunction? Is there any reason
18 why they shouldn't?

19 MR. RENWICK: Is there any reason why
20 they shouldn't, yes, I think there is a reason. They
21 shouldn't and I would think in that case the trade
22 union would be well advised to apply to the court for
23 an injunction.

24 THE COMMISSIONER: To do what?

25 MR. RENWICK: To require the maintenance
26 of the status quo of the situation.

27 THE COMMISSIONER: What is the status
28 quo? You agree that there can be no physical obstruction.

29 MR. RENWICK: That is right.

30 THE COMMISSIONER: And therefore the



1 gates are open?

2 MR. RENWICK: That is right.

3 THE COMMISSIONER: And the entrance
4 and exits are there for the people to enjoy or could use?

5 MR. RENWICK: Yes.

6 THE COMMISSIONER: Why is anything
7 necessary beyond that?

8 MR. POLLOCK: Why aren't the people
9 going through if they are open? If there is free pas-
10 sage which you accept to be properly there, what does
11 the court add by saying there shall be one, if there
12 already is one. How does the employer benefit from
13 that, unless of course the free passage isn't there?

14 THE COMMISSIONER: I think the answer
15 was given by one of the witnesses here, a very inter-
16 esting answer but a very true answer when he said, "Oh,
17 well, you know what human nature is and when you have
18 men around a picket line they are worked up emotionally
19 and it is inevitable there will be obstruction if you
20 leave them long enough, and you have a recalcitrant em-
21 ployee, he is going to try to go out and in and they
22 will try to prevent him." That is human nature as it
23 has been described here.

24 MR. RENWICK: That is right.

25 THE COMMISSIONER: And as good a des-
26 cription as you can get.

27 MR. RENWICK: But the public order is
28 in the hands of the police.

29 THE COMMISSIONER: Then you say it is
30 a police job?



1 MR. RENWICK: It is a public order and
2 the maintenance of public order.

3 THE COMMISSIONER: Against the union
4 men?

5 MR. RENWICK: Yes, of course, or against
6 the employer.

7 THE COMMISSIONER: That reduces itself
8 to this. In a picket line you can't have a line only to
9 communicate information and only to persuade rationally
10 because the emotions are too strong for that.

11 MR. RENWICK: Well, sir, I will not
12 accept that conclusion but let me speak about the abuse
13 which is being made by the injunction procedure. Leaving
14 the point you make, why did they go to the court?

15 THE COMMISSIONER: What would you say
16 to this, Mr. Renwick? It has been suggested and we have
17 been considering it, suppose you say to anybody who makes
18 an application, "Bring forward some of the men who can
19 give testimony to that fact and notify the other side by
20 telephone what you are going to do so they will be here.
21 Then they can listen to these men tell their story and
22 they can bring a group from the plant to answer them."
23 So you would have a trial then and there before a judge,
24 who can size up the witnesses and believe or disbelieve
25 them and come to a conclusion, without having affidavits?

26 MR. RENWICK: I believe that part would
27 be good on the ex parte, but dealing with the other
28 aspect when both parties are before the court and the
29 interlocutory injunction is up, why does the employer go
30 to the court? I think it is a good question. The fact



1 is he does go to the court in certain circumstances.

2 THE COMMISSIONER: What are they?

3 MR. RENWICK: Those circumstances are
4 where the management of the company is able to say to
5 itself, "We are going to replace the labour force in
6 this plant, either by another labour force or by the
7 introduction of machinery which will dispense with the
8 labour force."

9 THE COMMISSIONER: And certainly by the
10 introduction of other people.

11 MR. RENWICK: And the way we can do
12 this is because this is a ~~feasible~~ economic operation,
13 fine, we know the court will grant us the kind of in-
14 junction which will permit us to preserve what we con-
15 sider to be our right to operate this plant, and by
16 getting an injunction from the court we are getting the
17 tacit recognition that it is legitimate for us to re-
18 place the labour force even though there is a legal
19 strike.

20 THE COMMISSIONER: Let me take these
21 statements in order. To get the injunction you would
22 go before a court and you would say, first, there is a
23 strike at this plant. The owner of the plant or em-
24 ployer believes and is prepared to undertake to continue
25 to operate that plant by tempting other workers to take
26 the place of those on strike. He says we want an in-
27 junction to protect these people from interfering, which
28 they haven't been doing up to that time. Would you say
29 that would be the application? Or you might say there
30 is a strike and we want to get men in and we want an



1 injunction, but they don't do it on that basis and they
2 could not. That is not the basis provided by the statute.

3 MR. RENWICK: But this is, in fact, the
4 economic consideration in which the company is only in-
5 terested in. Let me illustrate this. The Tilco case
6 happens to be a clear case, almost an innovation on the
7 labour scene in the province, but a perfectly clear case
8 when a legitimate strike and all the proper procedures
9 are gone through. The employees who withdrew their
10 labour are in danger of losing their jobs. So the em-
11 ployer is in a situation where he knows he can replace
12 the labour force because of the low wage area in which
13 that plant is situated, so he gets legal advice and he
14 says, "Oh, yes, it is a tradition, go to the court, get
15 an injunction and limit the number of pickets."

16 THE COMMISSIONER: What do you have to
17 show the court to do that?

18 MR. RENWICK: To get the number of
19 pickets reduced?

20 THE COMMISSIONER: To get an injunction?

21 MR. RENWICK: This is my point, I don't
22 know what you have to show the court under Section 16
23 to get an injunction.

24 MR. POLLOCK: The injunction was ob-
25 tained under 17. It was obtained ex parte under Section
26 17 on affidavit evidence, indicating there was ob-
27 struction of people getting into the plant. There was
28 pounding on cars and other things. That was done by
29 affidavit and it was not cross-examined but there is
30 evidence that constituted evidence before the court.



1 Assuming that was true and you can
2 assume it was true, we have to accept it that the court
3 was moved on the basis of the evidence to make an order
4 and it made an order.

5 MR. RENWICK: Three days later the
6 matter came on before a court again, to get an interlocu-
7 tory order of the court, not the interim injunction.

8 THE COMMISSIONER: I am assuming you
9 are really treating these as two independent applications.
10 One requires certain grounds. The other, what are the
11 grounds? I would say equity in considering its general
12 jurisdiction would require just as much as Section 17
13 requires.

14 MR. RENWICK: Let me try to eliminate
15 the extraneous part of this. The one difficult problem,
16 the one difficult problem in the Tilco case was the in-
17 junction on December 20th. That is the expiration of
18 the three-day period, or whatever you want to call it,
19 a continuation or new one. The fact is it went on a
20 consent.

21 THE COMMISSIONER: What was the signi-
22 ficance of that?

23 MR. RENWICK: For practical purposes
24 there was no discussion in the court on the grounds on
25 which the injunction went, it was part and parcel again
26 of the general atmosphere in which these relationships
27 have been settled for almost a generation, and in the
28 Oshawa Times situation the same situation held. Counsel
29 for the union and counsel for the company consented, so
30 the argument was not before the courts.



1 THE COMMISSIONER: The counsel for the
2 union?

3 MR. RENWICK: Yes, in both cases.

4 THE COMMISSIONER: Why didn't he chal-
5 lenge in the first place, challenge the grounds on which
6 the ex parte was issued and relate that for renewal as
7 a ground for equitable abstention?

8 MR. RENWICK: Sir, I am not criticizing
9 counsel. I was not there. I don't even know who the
10 counsel were on the particular applications. It appears
11 to me the counsel present and going before the court is
12 because counsel is part of the general settlement on
13 industrial relations. This was part of the procedure
14 that went through.

15 THE COMMISSIONER: Do you think counsel
16 for the union is so little regardful of the interests of
17 his clients that he would be a party to this, unless he
18 was persuaded?

19 MR. RENWICK: I am not assuming that.

20 THE COMMISSIONER: When you say the
21 counsel is part of the performance and goes along almost
22 automatically, because he thinks the court is there for
23 to issue these things out automatically?

24 MR. RENWICK: I was stressing part of
25 the general framework of labour management relations. I
26 am not suggesting for one moment he is simply acting as
27 part of a procedural settlement. I am simply saying this
28 is the way, by and large, these matters have been dealt
29 with for a generation. Counsel do consent.

30 MR. POLLOCK: He must have accepted at



1 least the substance of the factual situation, the facts
2 disclosed on the ex parte. He must have accepted that
3 as forming a basis for an order of some kind, and he
4 agreed that out of this labour relations mens rea.
5 This was the type of order he would probably get if he
6 fought it anyway.

7 MR. RENWICK: That is right. This is
8 the way it goes on. What I am trying to get to is
9 simply saying this is the one difficulty of the Tilco
10 and Oshawa cases, and a lot of cases. The court has
11 never been required to express any judgment of what is
12 the basis of the just or convenience of issuing the in-
13 junction.

14 THE COMMISSIONER: Then you say when
15 you refuse the injunction a private field of consider-
16 ation is open to the court, convenience?

17 MR. RENWICK: Let us forget entirely
18 the ex parte -- let us take a situation where there is
19 no ex parte injunction and the application is under just
20 and convenience.

21 THE COMMISSIONER: I say in the first
22 place I would think the court would feel it was limited
23 to the state and conditions present when dealing with ex
24 parte, and if that were not a fact I would say this,
25 what are the grounds upon which equity has, from its
26 origin, issued injunctions? It was to preserve something
27 of the greatest importance for the period of its deter-
28 mination.

29 MR. RENWICK: That is right.

30 THE COMMISSIONER: And therefore if there



1 were no damage, no injury, no threat to the peace, it
2 would say you have no case.

3 MR. RENWICK: But it would base its
4 jurisdiction on two propositions, one is the traditional
5 one that you must go to the court with clean hands, and
6 secondly you are entitled in that case to an injunction
7 to preserve what could be destroyed.

8 THE COMMISSIONER: It would not depend
9 on the circumstances. If I were in possession of the
10 land they wouldn't restrain me in dealing if I have a
11 prima facie case. I might sell it but on the other
12 hand if the circumstances were different and you admit-
13 tedly were a trespasser in there, they would restrain
14 you from any act that might give a challenge to title.

15 MR. RENWICK: I agree, but I am not
16 suggesting the jurisdiction of the court in equity ex-
17 isted at this time the court was faced with this kind
18 of situation before it, where it is required to decide,
19 "Is it just or convenient?"

20 I am saying counsel's consent generally
21 means it must be just so the court will not intervene,
22 but what the court then does, when it grants the injunc-
23 tion on the one hand, it not only preserves the tangible
24 property of the company, not only preserves the tangible
25 property of the company, it tacitly or otherwise permits
26 the company to continue its operation, and on the other
27 hand destroys -- if I may use the term -- the appropriate
28 interest of the employee who is legitimately on strike
29 in his job, and the employee sees his job disappear
30 before his eyes, by either the substitution of another



1 labour force or by technological innovation.

2 THE COMMISSIONER: Do you realize what
3 you say? By the first of that you say the law itself
4 is not sufficient to protect his property but the in-
5 junction is, so you are attributing an absolute inter-
6 ference with the law. You implied that. It would lead
7 to the destruction of the property but it is the in-
8 junction that saves it.

9 MR. RENWICK: No, sir, I am not at all.
10 The company for whatever reason issues a writ out of
11 the court in a claim against another party in a civil
12 law suit. Why it does it --

13 THE COMMISSIONER: Why does it?

14 MR. RENWICK: It is for this reason
15 that it can obtain, without an adjudication of the
16 matter in dispute, without any adjudication of the
17 matter in dispute, can obtain an order from the court
18 which permits it to continue to operate its plant.

19 THE COMMISSIONER: But only under the
20 establishment of the conditions specified in the statute.

21 MR. RENWICK: And the only conditions
22 are just and convenience.

23 THE COMMISSIONER: Oh, no. They are
24 to maintain it from the beginning. You have to show
25 personally a likelihood of damage.

26 MR. RENWICK: Leaving Section 17 aside
27 --

28 THE COMMISSIONER: Just and convenience,
29 but you say, particularly as you started out, it was the
30 injunction which the proprietor looks for to save his



1 property. What is he saving it against?

2 MR. RENWICK: He is not, sir, he is not
3 looking for the injunction to save his property. He
4 would call in the police, sir.

5 THE COMMISSIONER: Oh, well now, I
6 agree with what you imply and have not emphasized is
7 he has the police force to protect his property. He
8 must have the police or an injunction. This is not so.
9 He requires neither one. He has the law and when you
10 argue that this picket line is observing the law you
11 are saying you are respecting his property.

12 MR. RENWICK: No, sir, the point which
13 I am making, I am trying to eliminate the extraneous
14 items involved. I am simply saying, sir, that it has
15 nothing to do with the public order when the company is
16 advised by its counsel to sue for a permanent injunction.

17 THE COMMISSIONER: It is his fear of
18 injury or property destruction that may be very serious.

19 MR. RENWICK: This is right. Let us
20 argue he does and this is the reason he is going to
21 the court. He goes to the court to get an order of the
22 court to preserve his property, until he can get the
23 question resolved in the future by the court at some
24 distant time in the procedures.

25 In the meantime, he gets the order of
26 the court which limits the number of pickets. What, in
27 substance, he gets is not just the protection of his
28 tangible property from damage, but the right to operate
29 his plant.

30 THE COMMISSIONER: At the most,



1 accepting everything you say, all he wants is, is the
2 way cleared.

3 MR. RENWICK: So I can operate my plant.

4 THE COMMISSIONER: Certainly, without
5 destruction.

6 MR. RENWICK: But to operate his plant
7 he is not worried about the obstruction, if it is simply
8 an obstruction.

9 MR. POLLOCK: Why can't he operate his
10 plant with the picket line around it? Why does he have
11 to go to court?

12 MR. RENWICK: Because he will have
13 great difficulty. Take a peaceful picket line with as
14 many as you want, you may hold that sheer weight of
15 numbers is intimidation, or something the law should
16 prohibit. We cannot argue about that. I am saying a
17 peaceful picket line with the entrance to the plant open,
18 if there is such a thing, means he can replace the
19 labour force.

20 MR. POLLOCK: Assuming the people will
21 go to work at the plant under strike.

22 MR. RENWICK: It is easier to go into
23 a plant where there are two pickets, than those with
24 one hundred.

25 MR. POLLOCK: Why easier? Certainly
26 it is physically easier. There is a greater gap between
27 two men than a hundred and fifty. Is that the point?
28 I don't want to argue, I don't understand. You say the
29 injunction permits him to operate and in your earlier
30 discussion you said the law entitled him. Let us put it



1 the other way. The picketers were not entitled to
2 physically close up this plant, to obstruct people going
3 through.

4 MR. RENWICK: Let us agree one hundred
5 percent we are not talking any obstruction at the gate.

6 MR. POLLOCK: And people can cross
7 freely and not be stopped driving in and out?

8 MR. RENWICK: Driving in and out from
9 the plant, so an application is made to the court for
10 an injunction.

11 MR. POLLOCK: Why would there be an
12 application made unless there were circumstances of
13 concern, if he is operating his plant?

14 MR. RENWICK: Because he is asking for
15 an injunction from the court.

16 MR. POLLOCK: Are you suggesting in
17 every case there is an injunction sought when there is
18 picketing?

19 MR. RENWICK: Yes, because he thinks
20 there is going to be a cessation of the operation of his
21 plant.

22 MR. POLLOCK: The figures are against
23 you. In the study that doesn't occur. In some cases
24 there are injunctions granted. The figure sticks in my
25 mind that out of fifty-eight strikes in which the U.E.W.,
26 were involved in which there was picketing, only eight
27 or so injunctions were granted, so obviously the other
28 people had open access to the plant.

29 MR. RENWICK: Are you saying to me that
30 there were fifty-eight cases, was that it?



1 MR. POLLOCK: I think fifty-eight
2 strikes in which the U.E.W. were involved in.

3 MR. RENWICK: And only eight injunctions?
4 How many applications?

5 MR. POLLOCK: Eight. What about the
6 forty-two other cases?

7 MR. RENWICK: Let me take the Tilco
8 situation again, and let us forget the ex parte injunc-
9 tion altogether, and the only application is under
10 Section 16, and the court has to decide whether it is
11 just or convenient that the injunctions be granted. Let
12 us not worry whether or not the employer has gone to the
13 court or not, he has taken what is his right. He has
14 issued a writ for injunction against the other party.
15 The court can dismiss it as frivolous or vexatious. But
16 whether he has an orderly picket line and no obstruction
17 he is going to go to the court.

18 THE COMMISSIONER: Why?

19 MR. RENWICK: Because he knows he can
20 get the number of pickets limited.

21 THE COMMISSIONER: You are ignoring
22 first, the language of the statute and secondly the in-
23 tegrity of the courts.

24 MR. RENWICK: No, sir, I am not, sir,
25 ignoring or questioning the integrity of the courts, and
26 I am not ignoring the language of the statute. The
27 statute says if it is just or convenient the injunction
28 will be granted.

29 The point which council made that out
30 of the fifty-eight or whatever number it was, there



1 were only eight applications made. I am arguing that
2 the Commission should not deal with this within the leg-
3 alistic framework. If you will examine the situations
4 and I don't know the United Electrical Workers situation
5 we are talking about, but the places where the injunction
6 -- the application was made for the injunction -- is
7 where the company has decided that it can, as a matter
8 of economic activity, replace the labour force either
9 with another labour force or technological change. If
10 it can't make the decision it doesn't go to the court.
11 It is not concerned.

12 THE COMMISSIONER: All that means is
13 forty-two out of forty-eight are cases in which the
14 work stopped and there was no need of a picket line.

15 MR. RENWICK: So the picket line is
16 not significant.

17 MR. POLLOCK: But in those other forty-
18 eight cases the work did not stop, the company continued
19 to operate in some of the cases.

20 MR. RENWICK: I have to -- as I say I
21 am not familiar with the situation -- I am proposing to
22 you the other kind of situation, the other kind of
23 situation I am talking about. The case which is an
24 extant one but an example. In Hamilton that was the
25 Steelworkers or Canada Packers with the Packing House
26 Workers, when they go on strike you don't get the comp-
27 anies applying for injunctions even though pickets are
28 walking.

29 MR. POLLOCK: There aren't pickets in
30 some cases.



1 MR. RENWICK: The works are closed
2 because they know they can't replace the labour force
3 or introduce new technological change.

4 THE COMMISSIONER: What you mean is
5 something that has been suggested. If you prevent them
6 from getting new workmen you eliminate the necessity
7 for picket lines.

8 MR. RENWICK: That may be in some cases

9 THE COMMISSIONER: In any case in which
10 you say no outsiders can be employed in this plant to
11 take the places of the strikers.

12 MR. RENWICK: Until the matter which
13 the employer elected to pursue has been adjudicated in
14 court.

15 THE COMMISSIONER: I am not talking
16 adjudication, I am talking future policy, the right to
17 employ strike breakers.

18 MR. RENWICK: I am not speaking of
19 policy, I --

20 THE COMMISSIONER: That is what your
21 argument amounts to. You state he decides he can run
22 his plant by strike breakers, and if he doesn't do that
23 because he is prevented, therefore the labour dispute
24 is resolved.

25 MR. RENWICK: Yes, but that is not what
26 I am arguing. It may be that is your conclusion.

27 THE COMMISSIONER: It may be. I am
28 not saying anything about that.

29 MR. RENWICK: I realize that. What I
30 am simply saying is, if the court in a case, where



1 an application is made for an injunction were to say to
2 both parties to the dispute, "You the company will get
3 an order of the court limiting the number of pickets
4 before this plant, you will have -- all you will have
5 in any event is the protection of the police force for
6 the protection of your property, but you cannot operate
7 this plant until the matter in dispute comes before us
8 for adjudication, and you, the members of the trade
9 union as such, who are out on strike, you as such limit
10 your activity by picketing to the number which we state
11 shall be, until such matter comes before the court for
12 adjudication." And the court says to both parties, "You
13 want a permanent injunction." To the company it will
14 say, "We will expedite the injunction to the greatest
15 possible extent, but in the interval we as a court will
16 not allow ourselves to be used in a way to put individual
17 citizens legitimately on strike, in a position where
18 they can watch day in and day out their jobs being
19 destroyed, and when the matter comes before us for ad-
20 judication we will look at the merits of the case, to
21 find out whether or not that is so."

22 I say to you I do not think that is
23 the kind of question the court should be asked to decide
24 as a matter of adjudication, but even if you grant that
25 I suggest to you, if the court took that position in
26 the interlocutory injunction period, that the company
27 is prohibited by injunction from operating its plant,
28 but is entitled to the full protection of its tangible
29 property. I also suggest the employees are limited on
30 picketing.



1 I would suggest to you the actions,
2 when an application is made for an injunction, if at all,
3 the number of actions would rapidly not only diminish
4 but the injunction as such would cease to be used for
5 that purpose.

6 MR. POLLOCK: Can I ask you this ques-
7 tion as a point of clarification? On one of your earlier
8 statements, is it your position, if you had a plant at
9 which there was a lawful strike and there were fifteen
10 or twenty pickets walking up and down before the entrance
11 and exit, and every time a car came up and the car went
12 through and there was no violence, nothing like that,
13 that the employer could go to the court and get an in-
14 junction limiting the number of pickets on that evidence
15 alone? Is that your position?

16 MR. RENWICK: No, I wouldn't say that.

17 MR. POLLOCK: So there would have to be
18 something else added, some other ingredient, either there
19 was physical interference or there was violence.

20 MR. RENWICK: Or just the position they
21 go to the court and say, "We want an injunction from
22 prohibiting anybody walking up and down."

23 MR. POLLOCK: They wouldn't get it on
24 that evidence.

25 MR. RENWICK: But they could still go
26 and try.

27 MR. POLLOCK: You agree they wouldn't
28 get it?

29 MR. RENWICK: All right.

30 MR. POLLOCK: There must be some other



1 ingredient in their claim to grant an application. Some
2 of his rights must be interfered with. The gates are
3 being closed physically or people are molested or some
4 other factor. You would agree with that?

5 MR. RENWICK: The ingredient is the
6 excessive numbers, the ingredient is the excessive one
7 of numbers of people and the likelihood of an outbreak
8 of some kind.

9 MR. POLLOCK: There has to be more than
10 just a chance that possibly something might occur. There
11 has to be some kind of evidence that something is occur-
12 ring or that there has been pushing and shoving, or
13 road obstruction or something like that.

14 MR. RENWICK: By the very nature of
15 the situation. As the Commissioner said, it is a highly
16 emotional situation when you have a withdrawal of the
17 labour force after a period of bargaining, when emotions
18 are at a height. It is not difficult when that kind of
19 situation occurs. It provides the situation as to
20 whether or not they can get an injunction if that kind
21 of situation occurs the chances of the injunction being
22 granted are very good. Therefore, one could say in most
23 cases where the labour force can be displaced by another
24 labour force, or technological change, which is known to
25 the people going on strike, the emotional atmosphere is
26 very hot. If you get a strike in a plant where the
27 threat isn't there, it is an orderly withdrawal and
28 almost a vacation that takes place. The fear is not
29 there.

30 MR. POLLOCK: Do any persons show fear



1 where there are people crossing the line -- and you
2 admit they have the right to go to work if they want
3 to -- maybe morally they ought not to.

4 MR. RENWICK: I am not making any com-
5 ment on that at all. I am speaking of the situation
6 where the employer goes to the court to get the injunc-
7 tion and he goes to the court, and as I say in most
8 cases the situation is one where he can replace the
9 labour force, or is one where there is an instance of
10 a skirmish or pushing each other, or a little scuffling
11 is taking place.

12 THE COMMISSIONER: I think we have
13 really exhausted this particular feature. I can only
14 add what Mr. Baldwin said once, "He showed the many
15 sidedness of truth and the infinite number of points
16 of view." Is that the last topic?

17 MR. RENWICK: There are some other
18 matters, sir, I wanted to cover. I would certainly
19 like to come back at some point to this position because
20 --

21 THE COMMISSIONER: You mean the
22 injunction?

23 MR. RENWICK: To this aspect I would
24 like to comment.

25 THE COMMISSIONER: Is there anything
26 more on the injunction? We have exhausted that,
27 surely.

28 MR. POLLOCK: I have a couple of other
29 things, perhaps we can continue it at some other time?

30 THE COMMISSIONER: What about you?



1 MR. RENWICK: I would meet your con-
2 venience.

3 THE COMMISSIONER: We have some other
4 matters to attend to, how long would it take?

5 MR. RENWICK: I would like to pursue
6 two or three other matters for about three-quarters of
7 an hour on some occasion.

8 MR. POLLOCK: We will adjourn then.

9 THE COMMISSIONER: Is there any time
10 that would suit your convenience?

11 MR. RENWICK: You can get in touch
12 with me.

13 MR. POLLOCK: We will make a convenient
14 time for the continuation of this hearing.

15 MR. RENWICK: Are there any other mat-
16 ters you want to ask me?

17 MR. POLLOCK: We will drop you a line
18 and let you know.

19 THE COMMISSIONER: Thank you for tak-
20 ing the time to come here and give us an idea of the
21 thoughts probably held by very many people.

22 MR. RENWICK: I don't know.

23 THE COMMISSIONER: I think you would
24 have a great many supporters for that view.

25 MR. POLLOCK: The hearing stands
26 adjourned.

27 -----
28 ---The hearing adjourned at 4:25 P.M. to be continued
29 at 10:00 A.M. on Monday, April 3rd, 1967.

BINDING SECT. OCT 20 1967

